

EXHIBIT B

Jane Doe et al. v. Reddit, Inc.
SACV 21-768 JVS (KESx)

TENTATIVE Order Regarding Motion to Dismiss

Defendant Reddit, Inc. (“Reddit”) filed a motion to dismiss the complaint of Plaintiffs Jane Does Nos. 1-6 and John Does Nos. 2, 3, and 5 (collectively — “Plaintiffs”). Mot., Dkt. No. 40. Plaintiffs filed an opposition. Opp’n, ECF No. 43. Reddit responded. Reply, ECF No. 44.

For the following reasons, the Court **GRANTS** the motion.

I. BACKGROUND

This is a class action lawsuit that arises from the posting on Reddit’s website sexually explicit videos and images of individuals under the age of 18 — commonly referred to as child sexual exploitation material (“CSEM”). First Amended Complaint (“FAC”), ECF No. 31, ¶ 1. Before addressing Plaintiffs’ claims, the Court briefly reviews how Reddit is structured.

Reddit is one of the Internet’s most popular websites and is built around users submitting links, pictures, and text that everyone can view and vote on. Id. ¶¶ 36-37. Reddit is organized into what are called “Subreddits,” which are online bulletin boards that are focused on particular themes or interests. Id. ¶ 38. Subreddits are governed as follows. Reddit allows users to create Subreddits. Id. ¶ 44. Each Subreddit is managed by a small group of users, who are given the title of “moderator.” Moderators can dictate what type of content is allowed on the Subreddit, subject to certain overall limitations placed by Reddit. Id.

Reddit itself has four teams of employees that engage in content moderation for the company. Id. ¶¶ 44-47. “Administrators” have the power to strip moderators of their privileges and ban Subreddits or particular content from Reddit. Id. ¶ 44. Administrators are primarily supposed to identify and remove content that violates Reddit’s Content Policy, whether on Subreddits or in private messages between users. Id. ¶ 44. The Trust & Safety Team focuses on enforcing Reddit’s Content Policy against malicious users and when content violations may have urgent legal or safety implications. Id. ¶ 45. The Anti-Evil internal security

team consists of back-end engineers who create automated software that flags content that violates Reddit's policies. Id. ¶ 46. Finally, the Legal Operations Team removes or disables content that it finds to be in violation of the Digital Millennium Copyright Act. Id. ¶ 47.

Jane Doe No. 1 is an individual who is now of the age of majority under United States and California law. Id. ¶ 8. An ex-boyfriend of Jane Doe No. 1 posted sexually explicit images and videos of Jane Doe No. 1 from when she was 16 years old on websites, including Reddit, without her consent. Id. ¶¶ 143-46. Each time that Jane Doe No. 1 reported the CSEM of herself to Subreddit moderators, it would take days for the CSEM to come down, only for it to reappear within minutes. Id. ¶¶ 148-49. When she had her ex-boyfriend's account banned, he was able to make a new account and post the CSEM anew. Id. ¶ 151.

Jane Does Nos. 2-6 and John Does Nos. 2, 3, and 5 are the parents of daughters who are below the age of majority under United States and California law. Id. ¶¶ 9-13. Each of their daughters has had CSEM images or videos of them posted on Reddit and have had to repeatedly request that various Subreddit moderators and Reddit administrators remove the CSEM, often only to have the CSEM reappear shortly after it is removed. Id. ¶¶ 156-229.

Plaintiffs allege that Reddit knowingly facilitates the posting of CSEM and benefits from the CSEM in the form of increased advertising revenue and subscription fees by premium Reddit users. Id. ¶¶ 61-65, 75, 119. Plaintiffs allege that Reddit facilitates the posting of CSEM to achieve these benefits in a variety of ways, including (1) allowing the creation of a number of Subreddits that target users seeking CSEM, id. ¶ 94; (2) rarely removing CSEM when it is reported by users, id. ¶ 82; (3) failure to verify users' age, id. ¶ 51; (4) reliance on poorly trained, volunteer moderators to manage Subreddits, id. ¶¶ 106-07, 110; (5) having ineffective and inefficient administrators managing content moderation for Reddit, id. ¶¶ 108-09, 112; (6) failing to take steps to prevent banned users from creating new user accounts on the website, id. ¶¶ 113-14; (7) failing to report all CSEM to the National Council for Missing and Exploited Children ("NCMEC"), id. ¶ 124; and (8) failing to use PhotoDNA, an automated means of identifying images of CSEM previously identified to NCMEC, until 2019, and at that point only using PhotoDNA minimally, id. ¶¶ 122-124.

Plaintiffs bring this lawsuit on behalf of one class and two subclasses. The Class is defined as:

all persons who were under the age of 18 when they appeared in a sexually explicit video or image that has been uploaded or otherwise made available for viewing on any website owned or operated by Reddit, Inc. in the last ten years.

Id. ¶ 239. Jane Doe No. 1 seeks to represent the following California subclass:

all persons residing in California who were under the age of 18 when they appeared in a sexually explicit video or image that has been uploaded or otherwise made available for viewing on any website owned or operated by Reddit, Inc. in the last ten years.

Id. ¶ 240. The remaining Plaintiffs seek to represent the following New Jersey subclass:

all persons residing in New Jersey who were under the age of 18 when they appeared in a sexually explicit video or image that has been uploaded or otherwise made available for viewing on any website owned or operated by Reddit, Inc. in the last ten years.

Id. ¶ 241.

Plaintiffs filed their Complaint on April 22, 2021. See generally Complaint, ECF No. 1. Following the filing of the instant motion and a motion to stay discovery, Plaintiffs filed the FAC. See generally FAC. Plaintiffs now bring nine claims for relief: (1) violation of the federal Trafficking Victims Protection Act, 18 U.S.C. §§ 1591, 1595; (2) violation of the duty to report child sexual abuse material under 18 U.S.C. § 2258A; (3) receipt and distribution of child pornography in violation of 18 U.S.C. § 2252A; (4) distribution of private sexually explicit materials in violation of Cal. Civ. Code § 1708.85; (5) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200;

(6) violation of California’s Trafficking Victims Protection Act, Cal. Civ. Code § 52.5; (7) violation of New Jersey’s child exploitation laws, N.J. Rev. Stat. § 2A:30B-3; (8) unjust enrichment; and (9) intentional infliction of emotional distress. FAC ¶¶ 248-98. Of these claims, the three claims for violation of California law are brought on behalf of the California subclass while the claim for violation of New Jersey law is brought on behalf of the New Jersey subclass. Id. ¶¶ 273-89.

Reddit moved to stay discovery pending resolution of this motion. Stay Mot., ECF No. 25. The Court granted that motion. Order, ECF No. 35.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under *Twombly*, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. Nor must the Court “accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678-80 (quoting *Twombly*, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Id.*

III. DISCUSSION

A. *Section 230 Generally*

Reddit's primary argument is that dismissal is appropriate because Plaintiffs' claims are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230. See Mot. at 5-18. Under § 230(c)(1), "[n]o provider . . . of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." In other words, "Section 230(c)(1) precludes liability for (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat as a publisher or speaker (3) of information provided by another information content provider." Gonzalez v. Google LLC, 2 F.4th 871, 891 (9th Cir. 2021) (internal quotation marks omitted).

The Court concludes that § 230 immunizes Reddit from many of Plaintiffs' claims.¹ First, Reddit is a provider of an interactive computer service. Under § 230(f)(2), an "interactive computer service" is defined as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server" Reddit provides a system that enables computer access by multiple users to a server. See also Hepp v. Facebook, Inc., 465 F. Supp. 3d 491, 498 (E.D. Pa. 2020) (finding that Reddit "falls squarely within" the definition of interactive computer service).

Plaintiffs argue that "the complaint alleges Reddit is responsible in whole or in part, for the creation or development of information." Opp'n at 18. As a consequence, Plaintiffs contend that Reddit is an "information content provider" and not an "interactive computer service." Under 47 U.S.C. § 230(f)(3) an "information content provider" is "any person or entity that is responsible, in

¹ Plaintiffs argue that the Court should not consider whether § 230 bars Plaintiffs' claims because § 230 provides an affirmative defense to claims. Opp'n at 18 n.9 (citing Gonzalez, 2 F.4th at 889; Lusnak v. Bank of America, N.A., 883 F.3d 1185, 1194 n.6 (9th Cir. 2018)). But the Ninth Circuit has held that § 230 can be considered on a motion to dismiss where "the allegations in the complaint suffice to establish the defense." Gonzalez, 2 F.4th at 890 n.8. The Court concludes that such is the case here. The Court does agree with Plaintiffs that if the complaint does contain sufficient factual allegations suggesting that Reddit is not immune under § 230, then the Court cannot dismiss the claims on that basis. See Opp'n at 18 n.10. But this is not the case here.

whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” Under Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1167-68 (9th Cir. 2008), a website is classified as an information content provider if it “materially contributes to [the information’s] unlawfulness.” Cases applying this test “have consistently drawn the line at the ‘crucial distinction between, on the one hand, taking actions (traditional to publishers) that are necessary to the display of unwelcome and actionable content and, on the other hand, responsibility for what makes the displayed content illegal or actionable.’” Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 n.4 (9th Cir. 2016) (quoting Jones v. Dirty World Entertainment Recordings LLC, 755 F.3d 398, 413–14 (6th Cir. 2014)) (citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 257–58 (4th Cir. 2009); Federal Trade Commission v. Accusearch Inc., 570 F.3d 1187, 1197-1201 (10th Cir. 2009)). Thus, “providing neutral tools to carry out what may be unlawful or illicit” is not sufficient to make an entity an “information content provider.” Fair Housing Council, 521 F.3d at 1169.

In making their argument, Plaintiffs rely most heavily on M.L. v. craigslist Inc., 2020 WL 5494903, at *4 (W.D. Wash. Sept. 11, 2020). See Opp’n at 19. In that case, the court held that craigslist was an information content provider with respect to sex trafficking advertisements posted to its website. M.L., 2020 WL 5494903 at *3-4. The court so held because (1) trafficking advertisements were posted on craigslist’s website while complying with its rules and guidelines, (2) traffickers paid craigslist to display trafficking advertisements in the “erotic services” section of the website, and (3) traffickers were able to evade law enforcement by making use of craigslist’s anonymous communications system. Id. at *3. These allegations collectively described “specific, concrete actions taken by craigslist that facilitated [the plaintiff’s] trafficking.”² Id.

Here, Plaintiffs contend that the FAC alleges that Reddit is an information content provider because of Reddit’s (1) “refusal to enforce its policies,” (2)

² Reddit attempts to characterize M.L. as holding that a website provider can only become an information content provider if the “website was designed” to take the illegal action. Reply at 3 (emphasis in original). But the M.L. court does not use the word “designed” in reaching its conclusion. See generally 2020 WL 5494903. Also, as noted previously, the test in the Ninth Circuit is whether the website provider being “responsib[le] for what makes the displayed content illegal or actionable.” Kimzey, 836 F.3d at 1269 n.4. The Court will look to this test.

provision of “karma” awards for subreddits featuring CSEM, (3) pseudonymous, private messaging system that allows evasion of law enforcement, (4) “elevation” of subreddits involving CSEM, and (5) use of “barely-trained moderators who failed to enforce its policies and propagated the spread of” CSEM. Mot. at 19. Before considering this argument, the Court first elaborates on the exact allegations in the FAC. First, the FAC states that Reddit “tries to ban as little content as possible” and so provides a reporting tool that includes “no opportunity for a user to explain to Reddit why the content is child pornography, [leaving] the user . . . to rely on a Reddit administrator or moderator to decide whether to remove the content.” FAC ¶¶ 80, 82. Plaintiffs summarize these allegations as showing Reddit’s “refusal to enforce its policies.” Opp’n at 19. Second, contrary to Plaintiffs’ summary, paragraphs 115 and 116 of the FAC do not include allegations that Reddit took any actions that “elevated” subreddits where users had posted CSEM. Rather, those paragraphs allege that those subreddits were often searched for by users and rated highly in user polls. FAC ¶ 115.

The Court is not persuaded that these allegations are sufficient for the Court to find that Reddit is an information content provider. The Court does not believe that the allegations show that Reddit is responsible for the illegal content on its website. Many allegations that Plaintiffs point to do not speak to whether Reddit “materially contributed” to the CSEM because the allegations relate to “neutral tools.” Karma awards, which are an aggregate metric representing how many user votes a user has received,³ and pseudonymous, private messaging apply broadly across Reddit and do not play any special role in the illegality of the CSEM. See Kimzey, 836 F.3d at 1270 (holding that “inputs from third parties [that] reduce[] . . . information into a single, aggregate metric . . . is best characterized as the kind of ‘neutral tool[]’ operating on ‘voluntary inputs’ that we determined did not amount to content development or creation”);⁴ Fields v. Twitter, Inc., 217 F. Supp. 3d 1116, 1127-29 (N.D. Cal. 2016) (holding that the provider of a direct

³ Karma “reflects how much a user has contributed to the Reddit community by an approximate indication of the total votes a user has earned on their submissions (‘post karma’) and comments (‘comment karma’).” FAC ¶ 41 (citation omitted).

⁴ Plaintiffs’ argument that karma is awarded by Reddit is irrelevant because the amount that users receive is determined by votes the user receives from other users. Opp’n at 20. While Reddit may have created a system for awarding karma, this does not change the fact that it is an aggregate metric. All such metrics must be created by an interactive service provider.

messaging service is not a publisher and is therefore immune under § 230). Nor does the Court believe that having a reporting tool without a comment section amounts to “materially contributing” to users posting CSEM on its website.

The remaining issue is whether Reddit’s use of community moderators causes Reddit to material contribute to users posting CSEM on its website. First, the Court notes that having community moderators instead of company moderators does not appear to the Court to have any bearing on whether Reddit is responsible for users posting CSEM on its website. In theory, a very highly trained set of committed community moderators could create an effective system for taking down CSEM.

Plaintiffs’ more promising argument is that Reddit’s community moderators are poorly trained, and this means Reddit materially contributes to users posting CSEM on its website. Plaintiffs allege that community moderators are slow, can engage in “seemingly arbitrary behavior,” can have difficulty communicating with Reddit administrators, and may be overruled by Reddit when moderators find that content violates Reddit’s Content Policy. See FAC ¶ 108-12. But the Court notes that these allegations do not appear to be specific to Reddit’s treatment of CSEM; rather, the complaints about Reddit’s use of community managers generally relate to handling of content that violates Reddit’s Content Policy. This is a key distinction with M.L. In that case, the allegations indicated that craigslist had rules, guidelines, and processes in place for its “erotic services” section by which traffickers could post advertising on craigslist’s website such that they could avoid law enforcement. M.L., 2020 WL 5494903 at *3-4. By contrast, here Reddit does not have a special way of handling CSEM that is particularly permissive relative to other kinds of content. The allegations against Reddit here are not sufficiently targeted such that there is “responsibility for what makes the displayed content illegal.” Kimzey, 836 F.3d at 1269 n.4; see F.T.C. v. Accusearch, 570 F.3d 1187, 1199 (10th Cir. 2009) (holding that “a service provider is ‘responsible’ for the development of offensive content only if it in some way specifically encourages development of what is offensive about the content” (emphasis added)).

Plaintiffs also advance a different theory that community moderators who upload CSEM are Reddit’s agents. Opp’n at 19-20. But this argument is unavailing. Plaintiffs analogize this case to Accusearch, in which “defendant’s knowledge that third-party ‘researchers were obtaining the information through

fraud or other illegality’ that was posted on defendant’s platform indicated its responsibility for developing unlawful content.” Opp’n at 19 (quoting Accusearch, 570 F.3d at 1199). But here there is no allegation that Reddit knew that the accused moderators were also posting CSEM. Cf. Reply at 7. Plaintiffs then compare the case to Mavrix Photographs, LLC v. Livejournal, Inc., 873 F.3d 1045, 1054 (9th Cir. 2017), in which the Ninth Circuit held that the Court should consider “common law agency principles” when deciding whether to hold a social media platform liable for the actions of moderators. Opp’n at 19-20. This case is inapposite for two reasons. First, Marvix related to copyright law, not Section 230, and therefore is not directly relevant to the analysis here. See generally Marvix, 873 F.3d 1045. Moreover, in Marvix it was alleged that Marvix gave “explicit and varying levels of authority to screen posts,” and this made Marvix an agent for purposes of screening and posting images. Id. at 1054. By contrast, there is no allegation that Reddit gave authority to the moderators to post CSEM or that they appeared to be agents of Reddit as they were posting CSEM. See generally FAC. The Court therefore concludes that Reddit is an information service provider that could be covered by § 230.

Returning to the remaining requirements for § 230 immunity, it is readily apparent that several of Plaintiffs’ claims seek to treat Reddit as a publisher or speaker of information provided by other content providers. Plaintiffs assert a claim for unjust enrichment because “[b]y permitting users to upload videos and images of Plaintiffs (and/or their daughters) and the Class and profiting from those videos and images, Defendant have [sic] become unjustly enriched at the expense of Plaintiffs and the Class . . .” FAC ¶ 292. The decision to permit users to upload content to a website is a quintessential function of a publisher under § 230. See Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1105 (9th Cir. 2009) (“Subsection (c)(1), by itself, shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties.” (emphasis added)).⁵ Similarly, Plaintiffs’ claim for distribution of private sexually

⁵ Plaintiffs attempt to distinguish the claim for unjust enrichment relating to advertising revenue as involving functions unrelated to publishing and therefore exempt from § 230 immunity. Opp’n at 21-22. The Court is not persuaded. Plaintiffs rely on Gonzalez, 2 F.4th at 897-99. Id. But in that case, the Ninth Circuit concluded that § 230 did not immunize Google from the allegation that it illegally provided material support to the terrorist group ISIS by sharing advertising revenue from YouTube with ISIS. Gonzalez, 2 F.4th at 898. In so holding, the Ninth Circuit noted that the claim “does not depend on the particular content ISIS places on

explicit materials stems from users being permitted to upload the relevant videos and images to Reddit. That claim is therefore barred. The same analysis holds true for Plaintiffs' claim for intentional infliction of emotional distress, which is premised on Reddit "knowingly tolerat[ing]" CSEM on its website. FAC ¶ 295. See Fair Housing Council, 521 F.3d at 1163 ("Congress sought to immunize the removal of user-generated content . . ."). The Court **DISMISSES** these claims.

B. Child Pornography Claims

Of course, providers of interactive computer services, like Reddit, do still have obligations for dealing with CSEM. Plaintiffs attempt to sue under the two statutes that provide the most stringent requirements: 18 U.S.C. §§ 2252A and 2258A. Neither, however, can form the basis of a claim that can proceed here. Although Plaintiffs assert a claim against Reddit for failing to report CSEM as required under 18 U.S.C. § 2258A, there is no private cause of action that allows Plaintiffs to assert that claim. See 18 U.S.C. § 2255 (providing causes of action for various violations of criminal CSEM statutes but not listing § 2258A).

18 U.S.C. § 2252A makes it illegal to knowingly receive and distribute CSEM. In contrast to § 2258A, § 2252A does provide a private right of action for individuals who are aggrieved by another's knowing receipt and distribution of CSEM. 18 U.S.C. § 2252A(f). But § 230 provides immunity for interactive computer services in civil suits under § 2252A as well. Notably, § 230(e)(1) states that § 230 "shall not be construed to impair the enforcement of . . . chapter 110 (relating to sexual exploitation of children) of title 18 . . ." Chapter 110 includes § 2252A. But, the Ninth Circuit has held that § 230(e)(1)'s use of the word "enforcement" shows an intent to only exclude criminal enforcement under that chapter, not civil claims. See Gonzalez, 2 F.4th at 890 (collecting cases); see also Doe v. Bates, 2006 WL 3813758, at *3-4 (E.D. Tex. Dec. 27, 2006) (holding that § 230(e)(1) does not provide an exception permitting civil suit under § 2252A). While the Government could prosecute interactive computer services for

YouTube; this theory is solely directed to Google's unlawful payments of money to ISIS." Id. Here, by contrast, Plaintiffs' claim for unjust enrichment is the only one for which the illegality is the receipt of advertising revenue. That claim is inherently premised on the CSEM appearing near the advertising being improper. The particular content on Reddit therefore does matter, and Gonzalez is distinguishable.

knowingly distributing CSEM, they cannot be subject to civil suits under these statutes. The Court therefore **DISMISSES** the child pornography claims.

C. Trafficking Claims

1. Federal Claim

This brings the Court to the Plaintiffs’ attempt to assert a claim for violation of the federal sex trafficking laws that are exempted from § 230 immunity. In 2018, Congress passed the Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”), which added § 230(e)(5). Pub. L. No. 115-164, 132 Stat. 1253. Under § 230(e)(5)(A), § 230 “shall not be construed to impair or limit” “any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title.” 47 U.S.C. § 230(e)(5)(A). Under § 1595, “[a]n individual who is a victim of a violation of this chapter may bring a civil action against . . . whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter” 18 U.S.C. § 1595(a) (emphasis added). Section 1591, in turn, defines “participation in a venture” as “knowingly assisting, supporting, or facilitating a violation” of subsection (a)(1).” *Id.* § 1591(e)(4).

The parties have substantial disagreement over what is required to state a claim under Section 1595 that is exempt from § 230 immunity. *See* Opp’n at 6-18; Reply at 18-23. The Court agrees with other courts that found that “the most persuasive reading of section 230(e)(5)(A) is that it provides an exemption from immunity for a section 1595 claim if, but only if, the defendant’s conduct amounts to a violation of section 1591.” *J.B. v. G6 Hospitality, LLC*, No. 19-cv-07848-HSG, 2021 WL 4079207 (N.D. Cal. Sept. 8, 2021); *see also Doe v. Kik Interactive, Inc.*, 482 F. Supp. 3d 1242, 1251 (S.D. Fla. 2020); *M.L. v. craigslist Inc.*, 2020 WL 5494903, at *4. While other courts in this circuit have reached a different conclusion and applied the more lenient mens rea standard under § 1595 of “known or should have known,” *see Doe v. Twitter, Inc.*, No. 21-cv-00485-JCS, 2021 WL 3675207, at *23-*24 (N.D. Cal. Aug. 19, 2021); *Doe v. Mindgeek USA Inc.*, -- F. Supp. 3d --, 2021 WL 4167054, at *4 (C.D. Cal. Sept. 3, 2021), the Court does not find their reasoning persuasive.

In the Court’s order granting Reddit’s motion for a stay of discovery pending resolution of this motion, the Court held that it “does not see any indication from the facts alleged that Plaintiffs would be able to state a claim under § 1591.” Order at 8. This was because “courts defining participation under § 1595 have, in the absence of direct association, required a showing of a continuous business relationship between the trafficker and the defendant such that it would appear that the trafficker and the defendant have established a pattern of conduct or could be said to have a tacit agreement.” Id. at 7 (quoting J.B. v. G6 Hospitality, LLC, 2020 WL 4901196, at *9 (N.D. Cal. Aug. 20, 2020)). The Court found that the allegations in the FAC were insufficient to show a “continuous business relationship.” Id.

Plaintiffs now point to other allegations that they allege indicate that Reddit “knowingly fostered a business relationship with sex traffickers to support their trafficking ventures.” Opp’n at 13-14. But there is no indication that there was a “business relationship” with such traffickers. It is true that there can be a “tacit agreement” that gives rise to participation in a venture. But where Reddit is not accused of having made a business deal with the alleged traffickers – and did not have any monetary relationship with those traffickers – the standard for stating a claim under § 1595 has not be satisfied.⁶

The core of the Court’s analysis from the previous order still holds true. Although Plaintiffs cite to a variety of other paragraphs in the FAC, see Opp’n at 13-14 (collecting citations), these allegations can be summarized as stating that Reddit has “affiliations with sex traffickers by enabling the posting of child pornography on its websites” and “making it easier to connect traffickers with those who want to view child pornography.” FAC ¶ 255. But this allegation is not sufficient to show “a continuous business relationship between” Reddit and traffickers. “To conclude otherwise would mean that all web-based

⁶ Plaintiffs argue that a footnote in J.B. expands the scope of what constitutes participation in a venture. Opp’n at 13 (citing J.B., 2020 WL 4901196, at *9 n.3). In that footnote, the J.B. court stated that it “can envision a circumstance, for example, in which a website operator openly and knowingly makes a deal with sex traffickers to support the venture by posting advertisements featuring trafficked minors in exchange for a cut of the proceeds,” and thereby participated in a sex trafficking venture. J.B., 2020 WL 4901196 at *9 n.3. But that footnote discusses a hypothetical and one in which the defendant received a “cut of the proceeds.” Id. The footnote therefore has no bearing on the Court’s analysis.

communications platforms have a legal duty to inspect every single user-generated message before it is communicated to a single person or displayed to the public, lest such platforms be deemed to have participated in the venture.” J.B., 2020 WL 4901196, at *9. “[T]here is no indication that Congress intended to create such a duty, or that it would be reasonable in light of the volume of posts generated by third parties daily.” Id. The Court agrees with the J.B. court and does not see any indication from the facts alleged that Plaintiffs would be able to state a claim under § 1591.⁷

While other courts have recently found allegations sufficiently alleged that web-based communication platforms were participating in a venture, those courts were both applying a different legal standard and considering different facts. See Doe v. Mindgeek, 2021 WL 4167054, at *5-*6 (Sept. 3, 2021) (finding plaintiffs sufficiently allege participation in a venture where an employee of the defendant reviewed, approved, and uploaded a video of a plaintiff); Doe v. Twitter, 2021 WL 3675207, at *23-*24 (N.D. Cal. Aug. 19, 2021) (finding participation in a venture where employees of defendant refused to take down videos of plaintiff). The allegations cited by Plaintiffs are insufficient to support a finding that Reddit knowingly participated in a venture, as defined by § 1591. See Opp’n at 7 n.2. The Court **DISMISSES** Plaintiffs’ federal sex trafficking claim.

2. *State Claims*

Reddit argues that the state law trafficking claims are barred by Section 230. Mot. at 18. The Court previously found that Section 230 did bar these claims. Order at 8-11. Plaintiffs do not raise any new arguments in response to the Court’s previous holding. Opp’n at 22 n.12. The Court therefore **DISMISSES** Plaintiffs’ state law trafficking claims.

D. *UCL Claim*

Finally, the Court notes that Plaintiffs cannot assert their remaining UCL claim. For an individual to assert a UCL claim, the person must have “suffered injury in fact and . . . lost money or property as a result of the unfair competition.”

⁷ This analysis does not address whether the distribution of CSEM is a form of sex trafficking as contemplated by § 1591(a)(1), an issue which the Court does not reach.

Cal. Bus. & Prof. Code § 17204. But, there is no indication in the FAC that Plaintiffs have lost money or property as a result of Reddit's alleged conduct. The Court **DISMISSES** this claim.

E. Leave to Amend

Plaintiffs seek leave to amend the allegations of their complaint. Opp'n at 25. "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with written consent from the opposing party or the court's leave, which should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (requiring that policy favoring amendment be applied with "extreme liberality").

In the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). The consideration of prejudice to the opposing party "carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal." Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) (internal citations omitted).

Here, the Court does not find that there was undue delay given that Plaintiffs' complaint has only been amended once. The Court is not convinced that the action was filed in bad faith. The Court is not convinced that most amendments would be futile or that Reddit will be unduly prejudiced. The exception is that the Court has concluded that there is no legal basis for bringing a claim under 18 U.S.C. § 2258A. Therefore, the Court **GRANTS** Plaintiffs thirty-days' leave to amend its claims, except as to the § 2258A claim.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion.

IT IS SO ORDERED.

The Court **VACATES** the September 20, 2021, hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, September 21, 2021, stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.